

REMARKS

The non-final Office Action of March 14, 2006, has been carefully considered. The rejections in the current non-final action are traversed in light of the claim amendments and remarks included herein and reconsideration of this application, and allowance thereof, is respectfully requested.

Claim 1 has been amended to clarify the limitations set forth therein. New claim 33 has been added and is directed to a method of dispensing a liquid containing dissolved ozone. Support for the limitations of new claim 33 is found, for example, in as-published paragraphs [0015] – [0018].

Claims 1-8, 10-24, and 26-32 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claims 1-7, 10-24 and 26-32 were rejected under 35 U.S.C. §103(a) as being unpatentable over Burris '773 in view of Burris '993. Claim 8 was rejected under 35 U.S.C. §103(a) as being unpatentable over Burris '773 in view of Burris '993 and further in view of Burris '043 (5,422,043) or Burris '283 (5,858,283).

I. Claims 1-8, 10-24, and 26-32 rejected under 35 U.S.C. §112

Considering the rejection under 35 U.S.C. §112, first paragraph, Applicants amend claim 1 as indicated above to recite “a non-pressurized liquid reservoir containing a batch of liquid to be ozonated. Support for the current claim characterization is found in the specification (e.g., [0013]; p. 5, lines 30-32), where a reservoir is presented as an alternative to a “pressurized water line” as a source of liquid. To distinguish the claim language from the pressurized alternative, Applicant previously proposed the amendment now objected to. Applicant has accordingly amended claim 1 to recite a non-pressurized liquid reservoir. Further support for a non-pressurized reservoir is also found at p. 5, lines 20-23, and the knowledge that if the reservoir were to be pressurized the valves of FIG 5a – 5c would not be necessary. Additionally, were the reservoir pressurized, a control valve would be necessary to regulate flow into the mixing system. Applicants respectfully contend that the subject matter of the amended claims has been described in the specification in a manner sufficient to convey to one skilled in the art that the Applicants had possession of the claimed invention at the time of filing the instant application.

II. Claims 1 – 7, 10 – 24 and 26 – 32 rejected under 35 USC §103(a)

Considering the rejection of claims 1 – 7, 10 – 24 and 26 – 32 under 35 USC §103(a) as being obvious over Burris '773 in view of Burris '993, Applicants respectfully traverse the Examiner's conclusions and the rejection. Burris '773 is cited as teaching a liquid treatment system comprising an untreated liquid source. The referenced system of Burris '773, for example Fig. 4, requires supply pressure (col. 2 line 66 in conjunction with col. 5, lines 4-10 and col. 5, lines 65-66) to output treated liquid; the inlet liquid displaces liquid within the treatment system in order to cause an output of treated liquid (col. 5, lines 67-68 in conjunction with col. 5, lines 29-35). Moreover, the '773 "outputs treated liquid on demand by the opening of valve 14." (col. 3, lines 2-5).

Burris '773 is acknowledged by the Examiner as failing to teach a non-pressurized reservoir, yet Burris '993 is alleged, in combination with '773, to teach the recited non-pressurized reservoir. As the basis for the combination the Examiner asserts that it would have been obvious to employ a non-pressurized reservoir as taught in Burris '993 in the apparatus of Burris '773. Moreover, it is alleged that such a modification "would have given the same results" (Office Action, page 4). Presumably, the Examiner is suggesting that the non-pressurized reservoir would be substituted for the "pressurized liquid supply 11" as disclosed in the various embodiments of Burris '773. Applicants note, however, that the Examiner has failed to indicate why one would have been motivated to make such a substitution (modification), particularly in view of the teaching in Burris '773 that a treatment chamber 18 is fed by the pressurized water supply, and operates under pressure (col. 3, lines 26-28). Why would one of skill in the art be motivated to modify Burris '773 to achieve the "same results"? Furthermore, it is not apparent how the embodiment of Fig. 1 in Burris '773 would work using the substitution proposed by the Examiner. Accordingly, Applicants respectfully urge that the Examiner has failed to indicate a motivation for one skilled in the art to make the combination and modification suggested. Applicants respectfully submit that *prima facie* obviousness has not been established.

Even considering the combination, *in arguendo*, claim 1 expressly recites a "controllable delivery system to direct the liquid containing dissolved ozone to the point of use, where a rate of flow through the controllable delivery system is adjusted

by the user.” The liquid containing dissolved ozone is an important aspect of the present invention as water containing dissolved ozone is a potent oxidizer and germ killer. The dissolved ozone can reduce or eliminate gingivitis, gum bleeding, bad breath, teeth stains, and harmful oral bacteria. As well as cleaning teeth and refreshing the mouth, this inexpensive and easy to use small appliance can save users unpleasant and costly dental treatments and make them more attractive with whiter teeth and sweeter breath. (¶[0004]). As the ‘773 patent does not set forth the limitation language above, it cannot anticipate liquid containing dissolved ozone, or control of rate of flow, as presently recited in claim 1.

It appears that the “manual demand switch” of the ‘773 patent has also been urged as the control means for the rate of flow of liquid containing ozone. Yet no teaching has been identified to indicate where the rate of flow is controlled by such a switch. Nor has there been an indication as to how the ‘773 patent assures that the liquid delivered thereto has dissolved ozone in it (i.e., ‘773 recites delivery of treated liquid, not of liquid containing dissolved ozone). In fact, ‘773 does not have the configuration required to deliver the liquid containing dissolved ozone as claimed for the instant invention (see e.g., ¶[0022]).

As noted previously, the rejection also fails to indicate where the limitations of several dependent claims are taught by the ‘773 patent. Therefore, Applicants respectfully maintain that the rejection, as presently set forth, is incomplete. Applicants wish to further reserve an opportunity to respond to a complete rejection in the event the rejection is maintained and the basis more specifically set forth in a subsequent action.

For example, with respect to claim 10, no teaching of the generation of more ozone than can be dissolved is believed to be found in ‘773. Accordingly, the limitations of claim 10 are not taught by Burris ‘773. A similar limitation is found in claim 11, and includes the further requirement that the dissolved ozone concentration is determined by the solubility of ozone in the liquid.

Claim 12 further defines the manner in which the flow of ozonated liquid is controlled through a dispensing tip – use of a valve to control flow. Here again, the Examiner has not indicated where the recited limitation (“a valve controls the rate of output flow of the ozonated liquid through a dispensing tip”) is found in Burris ‘773. Thus, the

claim cannot be anticipated and must be indicated as allowable or a suitable rejection set forth.

In previously amended claims 15 – 17, specific limitations are directed to a device for causing pulsation of the liquid, and Applicants respectfully urge that no such limitation has been identified in support of the rejection of the claims. Moreover, because the term “pulsate” or “pulsation” is not found in ‘773, that patent is not believed to support a rejection of claims 15 - 17. Accordingly, these claims are also urged to be in condition for allowance, and an indication thereof is respectfully requested.

Insofar as claims 2 – 7, 10 – 24 and 26 - 32, inclusive, are concerned, these claims all depend from now presumably allowable claim 1 and are also believed to be in allowable condition for the reasons hereinbefore discussed with regard to claim 1 and as expressly set forth above with regard to certain of the dependent claims.

III. Claim 8 was rejected under 35 USC §103(a).

Turning to the rejection under 35 U.S.C. §103(a), Applicants respectfully incorporate the arguments above in traversal of the rejection of claim 1 from which claim 8 also depends. The Examiner has acknowledged that ‘773 does not teach the use of a diffuser. In fact, ‘773 teaches the use of a venturi 21 or pump 25 (or inline mixer 19) to combine and mix the ozone gas and liquid.

Conversely, claim 8 is directed to a “device ... where the ozone containing gas is pumped by a gas pump through a diffuser into the liquid.” The rejection also relies on two patents in which the Applicant(s) taught an ozone diffuser. However, Applicants continue to urge, as set forth previously and above, that the rejection sets forth no basis that would suggest such the combination and modification of the ‘773 patent to add the recited element. Rather, the rejection simply sets forth the conclusion that because a diffuser is taught in patents other than Burris ‘773, it would have been obvious to make the combination and requisite modification. This is not believed to be the standard for obviousness. Absent a teaching or suggestion for the proposed combination or modification, or the motivation for such a modification, it appears that the instant application has been used as the “recipe” from which elements of the various patents are being combined.

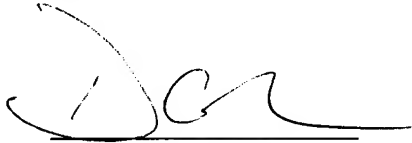
Furthermore, several embodiments set forth in '773 do not expressly indicate a pressurized source of ozone gas – leading to the conclusion that one of skill in the art would not have been motivated to modify '773, as to do so would require a pressurized gas source to pass ozone gas into the liquid. Absent a reference to the specific teaching relied upon as the basis for the rejection, this rejection again fails to establish *prima facie* obviousness to which Applicant can or should respond.

Applicants note that the Examiner's current response suggests that the basis for the proposed combination is to "remedy Burris '773" (Office Action; page 5). Applicants respectfully submit that no "remedy" of '773 is required, that there would not be any motivation for one skilled in the art to seek the recited element, and that it is only the Examiner seeking to find a basis to support a combination of Burris '773 with one or more additional patents to teach the recited claim elements, that serves as the "basis" for the rejection. Absent a teaching or suggestion of the motivation, Applicants again urge that *prima facie* obviousness has not been established. Claim 8 is respectfully urged to be in condition for allowance.

In view of the foregoing remarks and amendments, reconsideration of this application and allowance thereof are earnestly solicited. In the event that additional fees are required as a result of this response, including fees for extensions of time, such fees should be charged to USPTO Deposit Account No. 50-2737 for Basch & Nickerson LLP.

In the event the Examiner considers personal contact advantageous to the timely disposition of this case, the Examiner is hereby authorized to call Applicant's attorney, Duane C. Basch, at Telephone Number (585) 899-3970, Penfield, New York.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'DCB', is written over a horizontal line.

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